IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN. APPLICATION NO.119 OF 1992

Eliyad Abdulla Bholim ... Applicant

versus

Asstt.Collector of Customs,

New Bombay and another ... Respondents

...

Mr. Madhu M. Patel, for the Applicant.

Mr. J.C. Satpute, for Respondent No. 1.

Mr. B.H. Mehta, A.P.P., for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

15th February 2005

ORAL JUDGMENT :

01. Heard Counsel for the parties. With the assistance of the Counsel for the parties, I have gone through the judgments under challenge in this revision application. The Applicant was tried for offence punishable under sections 135(1)(a)(i) and 135(1)(b)(i) of the Customs Act

and Section 5-a of the Imports and Exports (Control) Act, 1947. The learned Chief Metropolitan Magistrate, Esplanade, Mumbai, by decision dated 10th August 1990, after considering the evidence on record, convicted the Applicant - accused No.1, for the offence for which he was tried, in view of the overwhelming evidence to indicate the complicity of the Applicant in the commission of the crime. The learned Magistrate then proceeded to sentence the Applicant - accused No.1 to undergo rigorous imprisonment for 18 months and pay fine of Rs.15,000/-, in default to undergo further rigorous imprisonment for 9 months on each of the three charges. Substantive sentences were directed to run concurrently, with usual set off. The co-accused Nos. 2 and 3 were, however, acquitted by the learned Magistrate, as no offence was made out against them. Accordingly, the Applicant carried the matter in appeal before the Court of Sessions for Greater Mumbai, being Criminal Appeal No. 151 of 1990. That appeal has been dismissed by the Sessions Court by judgment and order dated 5th May 1992, affirming the view taken by the trial Court. The Sessions

Court, in its well-considered judgment, has reappreciated the evidence on record and reached at the same findings of facts as noted by the trial Court against the Applicant - accused No.1. For that, the Sessions Court adverted to inculpatory statement of the Applicant made before the Customs Officer, besides the fact that the Applicant was caught red-handed on the spot and seizure of goods, valuing over Rs.61 lakhs, in the form of 203 gold biscuits, was made from the vessel, which was under the control of the Applicant, being Tindal of the vessel, coupled with the fact that the contraband items were found in concealed position in the vessel, which were obviously not declared. All these aspects have been examined by the Sessions Court, as can be discerned from discussion in para 5 of the impugned judgment. The Applicant, being dissatisfied with the decision of the Sessions Court, has approached this Court by way of revision application.

02. Although in the revision application, as filed, the Applicant has criticised the concurrent findings of facts reached by the two

Courts below, however, in the Summary of Written Submissions filed in writing by the Applicant, the thrust is on reducing the sentence by showing leniency, as the offence pertains to year 1987 and the Applicant has already undergone judicial custody as well as COFEPOSA detention exceeding six and half months and paid fine of Rs.45,000/- in Court as per the directions and more than 18 years have elapsed from the date of offence and that the Applicant has remained unemployed for all these years, besides suffering physical and mental agony.

03. I shall first advert to the challenge to the concurrent findings of facts recorded by the two Courts below. Insofar as this aspect is considered, I have no hesitation in taking the view that the Courts below have taken into account relevant aspects of the matter to record finding of guilt against the Applicant in view of his inculpatory statement recorded before the Customs Officials, coupled with the fact that he was caught red-handed and seizure of contraband item to the extent of over Rs. 61 lakhs, in the form of 203 gold biscuits found in the vessel in

concealed position, which were obviously not declared, and that the Applicant was in complete control of the vessel, being Tindal thereof. Sofar as these findings are concerned, no fault can be found either with the approach or with the concurrent conclusion reached by the two Courts below. On that finding, the Courts below have rightly held that the Applicant is guilty of offence, for which he was tried. In other words, I see no reason to depart from the concurrent view taken by the two Courts below with regard to finding of fact, as referred to above. The Sessions Court has rendered well-considered judgment and has adverted to all aspects of the matter as can be seen from the discussion in para 5 onwards of the judgment in question. There is no reason to depart from the said conclusion.

04. That takes me to the question as to whether the sentence imposed by the two Courts below can be said to be excessive or unreasonable. The learned Magistrate has directed the Applicant to undergo rigorous imprisonment for 18 months and pay fine of Rs.15,000/-, in default to undergo further

rigorous imprisonment of 9 months on each of the three charges. The trial Court has further directed that substantive sentences shall run concurrently with usual set off. The trial Court has given due consideration to all aspects, which were canvassed before it by both sides on the question of sentence as can be seen from the discussion in para 16 onwards. In para 20, the trial Court has taken into account the fact that the offence was very serious and that the Applicant was singularly instrumental for commission of the said offence. Taking overall view of the matter, the trial Court proceeded to order that the Applicant shall undergo sentence for the period as referred to above. Even the appellate Court has considered the question of sentence from para 13 onwards and eventually thought it appropriate to uphold the view taken by the trial Court. As two courts below have applied themselves to the question of sentence and the grounds, which are now pressed into service, have already been considered by the Courts below, in exercise of revisional jurisdiction it will be inappropriate for this Court to substitute that view, merely because it

is also possible to take a lenient view by reducing the sentence to one year rigorous imprisonment, which was the minimum sentence provided by the Statute at the relevant point of time. In this view of the matter, I see no basis for interfering in exercise of revisional jurisdiction on the point of sentence as well.

05. Accordingly, this application shall fail. The same is dismissed.

(A.M.KHANWILKAR,J.)